

Fitzmaurice
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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-207337

DATE: December 15, 1982

MATTER OF: Department of Energy - Compensation for
Unauthorized Services Provided Government

DIGEST:

1. Consultants who relied upon the oral request of a former Department of Energy (DOE) consultant and traveled to Washington, D.C., to review grant proposals for DOE may not be paid on a quantum meruit basis. In order to be entitled to payment under a theory of quantum meruit, the Government must receive a benefit. Here, however, the contracting agency disregarded the consultants' work and had the grant proposals reevaluated by a new panel. The Government, therefore, did not receive a benefit.
2. Consultant who reviewed proposals for DOE during an earlier round of evaluations may be reimbursed on a quantum meruit basis, if the claim is otherwise for payment, since DOE used the results of that earlier round in determining grant recipients and, thus, received a benefit.

The Department of Energy (DOE) has referred to our Office the claims of 11 individuals who provided the Office of Alcohol Fuels (OAF) with consultant services, but have not been reimbursed for their services.

These individuals came to Washington, D.C., on the oral request of a former DOE consultant who, at the time he requested their services, was apparently working at DOE as a volunteer. The consultants were promised \$250 per day plus all travel and living expenses to assist OAF in reviewing grant proposals submitted in response to OAF's \$5 million grant solicitation program for novel small scale alcohol fuels technology projects. Relying only on these oral promises, the consultants provided OAF with the requested services; but

when they later asked DOE to be reimbursed for their services, DOE refused, largely on the grounds that the consultants had not entered into an authorized contract with OAF.

For the reasons indicated below, all but one of the claims may not be allowed.

OAF's grant program was conducted in two rounds. During the first round, 20 individuals responded to the former DOE consultant's request for their services. They reviewed approximately 1,400 proposals and recommended 123 for grant approval. At the request of OAF, DOE's Idaho Operations Office used purchase orders as the basis for paying these first-round reviewers \$50,528.81 in fees and expenses. Of the 11 claims now before us, only one arises out of the first round. A first-round reviewer who was paid \$3,000 claims entitlement to an additional \$3,021.21.

The second round involved only 10 reviewers, seven of whom had also participated in the first round. They evaluated approximately 600 proposals and recommended 87 for grant approval. For their services, they filed claims totaling \$33,027.79. OAF again requested that these claims be paid by the Idaho Operations Office, but this time the Office refused, arguing that the claims could not be processed since no procurement authorization had been in existence prior to performance. OAF then requested that DOE Headquarters process the second-round claims, but this request was also rejected.

DOE Headquarters rejected OAF's request because, in its opinion, OAF's use of the consultants was improper. The reasons for this conclusion were:

1. The services were requested by a person without any contracting authority and, in fact, without any official connection with DOE;
2. There was no formal procurement process and no written contracts were ever executed; and
3. The consultants were promised \$250 per day when consulting fees normally are not to exceed \$192 per day without prior approval from the contracting officer.

DOE also notes that, subsequent to the award of the 87 grants recommended by the second-round reviewers, a new Acting Office Director was appointed for OAF who, after becoming

familiar with the grant solicitation program, became concerned that the reviewers in both the first and second rounds had not complied with applicable organizational conflict of interest requirements. To resolve this concern in regard to the second-round selections, the Acting Director had all 600 second-round submissions reevaluated by a completely new group of reviewers whose services were acquired under an authorized contract. This new group recommended that only 27 proposals be accepted for grant awards and, of the 27, only 13 had been part of the original 87 selected by the second-round reviewers.

We have recognized that, under appropriate circumstances, payment may be made for services rendered on a quantum meruit basis (the reasonable value of work or labor). Recognition of a right to payment on this basis, however, requires a showing (1) that the Government received a benefit and (2) that the procurement of the services or goods in question are otherwise authorized by law.

Here, DOE rejected the findings of the second-round reviewers because, due to the potential for organizational conflicts of interest, DOE could not be certain that the grant recipients were properly selected. Therefore, the work of the second-round reviewers provided nothing of value and, as a result, the Government received no benefit. Accordingly, payment on a quantum meruit basis may not be allowed.

However, if otherwise correct, the additional claim of the first-round reviewer may be allowed. In his case, the Government received a benefit since the work of the first-round reviewers was in fact used by DOE in selecting the first group of grant recipients. Moreover, the record further shows that DOE obtains reviewer services by contract. Therefore, we can assume that the claimant was acting in the capacity of an independent contractor and is not subject to the \$192 per day ceiling DOE has set for consultants who, in effect, are employees of the Federal Government.

for Milton J. Jordan
Comptroller General
of the United States